

## BakerHostetler

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September 26, 2016

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**VIA FED-EX AND E-MAIL (hchaitman@chaitmanllp.com)**

Helen Davis Chaitman  
Chaitman LLP  
465 Park Avenue  
New York, NY 10022

*Re: Picard v. Trust U/ART Fourth o/w/o Israel Wilenitz, Adv. Pro. No. 10-04995  
(SMB)*

Dear Helen:

As you know, we represent the Trustee in connection with the above-referenced adversary proceeding. In light of the ongoing dispute with respect to the Trustee's Responses and Objections (the "Responses") to the Defendant's Document Demands and Interrogatories (the "Requests"), attached please find an early production of the *Expert Report of Bruce G. Dubinsky MST, CPA, CFE, CVA, CFF, MAFF* (the "Dubinsky Report"). While the Trustee makes this production in a good faith effort to settle the ongoing dispute related to the Trustee's Responses, the Trustee does not waive his objection that production of the report is premature under the operative Case Management Order. Nor does the Trustee consent to making Mr. Dubinsky or any of the Trustee's other testifying experts available for deposition prior to the opening of expert discovery.

As you know from previous productions of the Dubinsky Report in other adversary proceedings in which you serve as defense counsel, the Trustee offers the Dubinsky Report to establish, *inter alia*, that BLMIS operated a fraud through its Investment Advisory business in which Defendant held the accounts that are the subject of this avoidance action, and that BLMIS was insolvent at all relevant times. Documents that Mr. Dubinsky considered in connection with forming his opinions in the Dubinsky

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Report are identified in appendices to his report, and the vast majority of these documents are available to you in E-Data Room 1 (the “Data Room”). The Data Room was disclosed to you in the Trustee’s Initial Disclosures on December 21, 2015.

Notwithstanding the fact that we have already provided you with (i) a manual that describes the Data Room in significant detail and (ii) Appendix A to the Trustee’s Responses, which contains an additional high-level description of the Data Room’s contents, what follows is another detailed description of the Data Room’s structure, organization, and contents, which we are providing to you in an effort to make your navigation of the Data Room as easy and straightforward as possible. Though this is not a comprehensive description of all of the approximately four million documents contained in the Data Room, it should nevertheless act as an additional road map for you to independently navigate the non-objectionable materials you seek through the Requests.

The structure of the description below mirrors the structure and presentation of the various folders and sub-folders within the Data Room itself. Specifically, the description below is organized by the three primary “issue trees” a Data Room user can navigate—**DATA**, **DOCUMENTS**, and **FINANCIALS**—as well the various sub-folders contained therein.

## **I. DATA**

The documents contained in the DATA issue tree contains data extracted from the data sources that BLMIS maintained over the decades. The DATA issue tree is further divided into two sub-folders—**Account Statements and Ledgers** and **StorQM 1099 Forms**—and contains copies of reports and some “near-native” data obtained from the data sources.

The **Account Statements and Ledgers** sub-folder contains customer statements, ledgers, and reports for BLMIS accounts, which are further organized into sub-folders based on the data source from which the documents were uploaded to the Data Room—Microfilm, SETCHS17, STMTPro, or StorQM. To the extent your Requests seek information contained in the customer statements of accountholders other than the defendant in this adversary proceeding, that information is contained in this sub-folder.

The **Microfilm** sub-folder contains customer statements and ledgers from 1978 through November 1995. Before implementing the AS400 system in the 1990s, BLMIS used predecessor systems (*e.g.*, IBM System 36) to generate account statements, and microfilm was used as a storage medium that were generated by these systems. Thus, the statements in this sub-folder were retrieved from the processed microfilm reels. Generally, each reel contained labeling that gave an indication of what types of reports were contained on the reel. Using the label information, and also through an actual review of thousands of reels by the Trustee’s experts, a subset of the microfilm reels and the reports contained therein were identified for processing and Bates numbering. Customer account statements and other reports related to customer accounts identified on

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the microfilm reels are available in this folder.

The **SETCSH17** sub-folder contains SETCSH17 reports generated from BLMIS monthly backup tapes containing the SETCSH17 table. SETCSH17 (also referred to as “Settled Cash”) is a data table maintained in the House 17 AS400 that contains transactional customer activity used for generation of customer account statements. BLMIS archived this table on a monthly basis, purging the transactional data from the AS400 system after archive in order to preserve storage space. The SETCSH17 tables maintained on backup tapes were identified and restored. The SETCSH17 reports in this sub-folder are presented in PDF format and contain all transactions for the applicable account number, organized by month. The MS Excel files that were prepared from the extracted SETCSH17 tables are also available in this folder.

The **STMTPPro** sub-folder contains customer statements created using the StatementPro (“STMTPPro”) system from 1996 onward. STMTPPro is a proprietary AS400 add-on application developed by BLMIS programmers and was designed to create BLMIS customer statements outside the normal monthly processing of customer statements. Restored customer statements using the custom STMTPPro program are available in this sub-folder. Many of the STMTPPro tapes were stored with paper indices (“tape wrappers”) that provide selected information such as dates and account numbers. To the extent available, copies of the scanned tape wrappers are located in this folder.

The **StorQM** sub-folder contains customer statements created using the StorQM application on the AS400, which is a report-writing application used to generate various reports. The customer statements available in this folder are from December 1995 through November 2008. Please note that the processed StorQM reports in the Data Room were generated in “native-like” format and do not contain the custom StorQM “overlay” that appeared on the statements received by BLMIS customers.

The separate **StorQM 1099 Forms** sub-folder contains the IRS 1099 forms that were generated using the StorQM application. As with the customer statements, the documents available in this folder are from December 1995 through November 2008.

## **II. DOCUMENTS**

The DOCUMENTS issue tree contains electronic copies of hard copy documents collected from BLMIS facilities or obtained from third parties. These documents are organized by source, then by type of document/data. The bulk of the information responsive to your specific Requests seeking information related to BLMIS’s purported trading activities and its insolvency is contained in this section. The sub-folders and specific documents contained therein include:

- **BLMIS Documents and Work Papers:** This sub-folder includes various documents, notes, and papers created and maintained by BLMIS throughout its

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existence, including all pages from 21 of the spiral-bound notebooks used by BLMIS employees to track cash-in and cash-out transactions. This sub-folder further includes documents related to BLMIS's liquidity timeline, including letters from Dan Bonventre and Enrica Cotellessa-Pitz regarding loans to BLMIS using a JPMorgan Chase account as collateral.

- **BLMIS Operational Documents:** This sub-folder includes selected documents related to BLMIS's corporate structure and related organizational activities.
- **FINRA:** This sub-folder includes various documents related to FINRA, including BLMIS quarterly FOCUS Reports from 1983 through 2007, as well as accompanying data for the reports and audit materials provided by FINRA from the late 1990s onward, which further include FINRA questionnaires and document requests completed by BLMIS.
- **MSIL Documents and Work Papers:** This sub-folder includes various records regarding Madoff Securities International Limited, including corporate structure and organizational documents, shareholder resolutions, financial statements, and tax returns.
- **Other Public Documents:** This sub-folder contains certain publicly available documents provided for convenience of counsel. Documents include selected court filings from the criminal proceedings and/or trials of BLMIS employees and others.
- **Other Third Party Documents:** This sub-folder contains additional documents obtained from third parties that relate to BLMIS's purported trading activities, including information about specific transactions. The sub-folders are organized by the following sources:
  - **BATS Exchange:** contains documents produced by BATS Exchange Inc., including documents related to trading transactions and activity.
  - **Chicago Board of Options Exchange:** contains documents produced by the Chicago Board of Options Exchange, including documents related to trading transactions and activity.
  - **Chicago Mercantile Exchange:** contains documents produced by the Chicago Mercantile Exchange, including documents related to trading transactions and activity.
  - **Clearstream Banking SA:** contains documents produced by Clearstream Banking SA, including documents related to trading transactions and activity.

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- **Daily Stock Records (DSR):** contains various historical stock records, including pages from the New York Stock Exchange Daily Stock Price Record.
- **DTCC:** contains various records related to the Depository Trust and Clearing Corporation, including BLMIS's records from an account maintained with the DTCC, reports, statements, notices, confirmations, and other documents related to BLMIS trading activity through the Proprietary Trading and Market Making business units; also includes documents obtained from the leased DTCC terminal at BLMIS.
- **FAZ:** contains pages from FAZ newspaper reflecting trading activity.
- **Friehling & Horowitz:** contains various records related to purported accounting services provided by Friehling & Horowitz for BLMIS.
- **Interactive Brokers:** contains documents produced by Interactive Brokers LLC's in response to a subpoena, including various documents related to trading transactions and activity.
- **Knight Capital Group:** contains documents produced by Knight Capital Group Inc. in response to a subpoena, including various documents related to trading transactions and activity.
- **London Times:** contains pages from London Times related to local trading activity.
- **OCC:** contains documents produced by Options Clearing Corporation in response to subpoena, including various documents related to trading transactions and activity; Madoff Position Summary Reports.
- **Other:** contains documents produced by other third parties, primarily law firms that provided services to BLMIS.
- **SEC:** This sub-folder contains SEC-related materials, including publicly available documents and certain documents received from the SEC. The documents received from the SEC include certain filings made by BLMIS, including ADV forms and year-end filings.
- **Trustee Documents:** This sub-folder contains certain documents and items prepared or filed by the Madoff Trustee or his designees, including selected complaints, Trustee interim reports, and so forth.

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### **III. FINANCIALS**

The FINANCIALS issue tree contains documents obtained from various third-party institutions related to the financial condition of BLMIS and MSIL. As with the DATA and DOCUMENTS issue trees described above, there are numerous sub-folders labeled according to document source. Generally, the documents contained in these sub-folders are account statements, reports, cancelled checks, and related documents for accounts held by BLMIS or MSIL. The name of the specific entity is reflected in the sub-folder label, and the documents are organized into account-specific sub-folders.

The Data Room's search functionality can be a particularly useful method of navigating the FINANCIALS issue tree. In order to search, simply press the magnifying glass at the bottom of the window, next to the Field Tree. From there, you will be able to create a "New Search" and select certain search fields from the Conditions list. There are numerous fields that a user can search, such as Master Account Number, Master Document Date, Master File Name and Master Title Description. These fields consolidate 'like' fields for ease of searching, and when used, the search features will help you conduct more targeted and narrowed reviews of the Data Room's materials. Other usable fields and related descriptions can be found at the end of the User Manual.

We trust that the foregoing description will aid in your navigation of the materials contained in the Data Room, and once you review the materials contained therein, perhaps obviate or at least narrow the need for motion practice on the Requests. As you can see, the Data Room contains all of the non-objectionable materials you seek in the Requests, particularly those materials relating to BLMIS's purported legitimate trading activity, as well as its fraud and insolvency.

Sincerely,

/s/ Edward J. Jacobs

Edward J. Jacobs

Enclosures